Supreme Court, U.S.
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No. 05-

In the Supreme Court of the United States

CITY OF KNOXVILLE,

Petitioner,

v.

ENTERTAINMENT RESOURCES, LLC,
d/b/a Fantasy Video,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Petition involves a challenge by an adult book store to City of Knoxville Code section 16-468, which governs the location of sexually oriented businesses, including those that meet the definition of "adult bookstore." Under the ordinance, an "adult bookstore" is an establishment "having as a substantial or significant portion of its stock and trade books, magazines and other periodicals, videotapes or other electronic media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas . . . ."

The Question Presented is:

Did the Supreme Court of Tennessee err as a matter of law in holding the phrase "substantial or significant portion of its stock and trade" within the City's definition of "adult bookstore" is unconstitutionally vague?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceeding below are completely set forth in the caption.

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PETITION FOR A WRIT OF CERTIORARI

The City of Knoxville respectfully petitions for a writ of certiorari to review the judgment of the Tennessee Supreme Court in this case.

OPINIONS BELOW

The Tennessee Supreme Court's opinion is published at 166 S.W.3d 650. Pet. App. 1a-29a. The opinions and orders of the Tennessee Court of Appeals, Pet. App. 30a-48a, and the Knox County Chancery Court, Pet. App. 49a-107a, are unpublished.

STATEMENT OF JURISDICTION

The Supreme Court of Tennessee entered its opinion on June 29, 2005. This court has jurisdiction to review on a writ of certiorari the decision in question pursuant to 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

Section one of the Fourteenth Amendment to the Constitution of the United States provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of

> law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend XIV, § 1.

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

Subsection (a) of Knoxville City Code section 16-468 provides:

> *Adult bookstore* means an establishment having as a substantial or significant portion of its stock and trade books, magazines and other periodicals, videotapes or other electronic media which are designated or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or a section devoted to the sale or display of such material.

Knoxville City Code § 16-468(a).

Subsection (b) of Knoxville City Code section 16-468 provides:

> It shall be unlawful to establish, operate or maintain any adult business, that is, adult bookstore, adult motion picture theatre, adult mini motion picture theatre or adult cabaret, within the city, if the proposed location is within one thousand (1,000) feet of:
> (1) A residentially zoned district;
> (2) Any area of amusement which caters to family entertainment;
> (3) Any area which is devoted in part or exclusively to recreational activity;
> (4) Any school, park, church, mortuary or hospital;
> (5) Any adult business as defined by this section; or
> (6) Any other regulated use, including but not limited to establishments authorized to sell any alcoholic beverages for on- or off-premises consumption. Any location selling beverages that contain less than five (5) percent alcohol are not to be considered with regard to the required spacing.

Knoxville City Code § 16-468(b).

STATEMENT OF THE CASE

This case presents the important question of whether a municipal ordinance that regulates the location of sexually oriented businesses must set forth a specific percentage of an establishment's stock and trade that is sexually oriented in order for the establishment to be classified as an adult bookstore. The Tennessee Supreme Court held that the City's ordinance is unconstitutionally vague because the court concluded that the phrase "substantial or significant portion" is not susceptible to a narrowing interpretation and fails to provide adequate guidance to sexually oriented businesses and law enforcement. Although the decision submitted for review